

Local Government Investigations and Compliance Inspectorate

Greater Geelong City Council Community Priorities Scheme Investigation

December 2014

Executive summary

Introduction

The principle of good governance underpins Victoria's local government sector. Good governance strengthens integrity, instils confidence, and maximises community value and accountability. Non-adherence to good governance can, at the least, reduce the level of public confidence in organisational performance or, at worst, result in serious integrity issues or lead to breaches of statutory requirements.

The investigation conducted by the Local Government Investigations and Compliance Inspectorate ('**Inspectorate**') into the Greater Geelong City Council's ('**Council**') 'Community Priorities Scheme' ('**Scheme**') has identified that Council created a significant integrity risk issue in relation to the Scheme.

It was found that the Scheme allowed ward councillors to act arbitrarily in their allocation of public monies over a period of nine years commencing in 2005. These funds were allocated by ward councillors to projects within their own wards with limited oversight and accountability, elements that are fundamental to Council's responsibilities to the community.

The practice, more particularly the lack of transparent decision making, was called into question arising from the \$59 million made available for allocation over the life of the Scheme.

Council staff also voiced concerns, citing that the ongoing operation of the Scheme impacted on the ability to fund higher priority projects, leading to a negative impact on the culture of the Council and on staff morale.

The objective of this investigation was for the Inspectorate to investigate the practice of ward councillors allocating public monies between 2005 and 2013 as part of the Scheme and, in doing so, determine whether this practice demonstrated sound governance practices and adhered to the *Local Government Act 1989* (Vic) ('**Act**').

Terms of reference and scope of work

On 13 November 2013, the former Minister for Local Government wrote to the Acting Chief Municipal Inspector in regard to Council's Scheme. In the letter, the Minister requested that:

"... given the extent of funding available to be allocated under this scheme, I ask that the Inspectorate forensically investigate actual expenditure under the scheme compared with what was budgeted by the Council, dating back to the program's inception, for compliance with the Act."

The terms of reference for this investigation were to:

- investigate and advise in relation to the operation of the Scheme since inception;
- fully investigate and advise in relation to each allocation made in the 2011/12, 2012/13 and 2013/14 financial years;
- advise on any other matters arising during the course of the investigation; and

- report on all matters captured above.

The investigation consisted of:

- a comprehensive investigation of the 396 projects (comprised of 623 individual allocations) made during the 2011/12, 2012/13 and 2013/14 financial years; and
- discussions with selected Council staff and councillors.

In addition to these 396 projects, the investigation considered the implementation and the operational workings of the Scheme in its entirety.

Context

This investigation followed criticism of councillor discretionary funding programs in the local government sector, including:

- a circular issued by the former Executive Director of Local Government Victoria and Community Information ('**Circular**') on Councillor Discretionary Funds ('**CDF**') in May 2006; and
- a report issued by the Inspectorate entitled '*Review of Councillor Discretionary Funds*' ('**Inspectorate Report**') in October 2013.

Further, in September 2011, the Victorian Auditor-General released a report entitled '*Business Planning for Major Capital Works and Recurrent Services in Local Government*' ('**VAGO Report**'), which, among other things, recommended that councils establish various controls to ensure that their plans and budgets meet industry and government best practices.

The operation of the Scheme also received critical feedback via three separate legal opinions obtained by Council between January 2010 and November 2013.

Overview of the Scheme

The Scheme, initially implemented as part of the 2005/06 budget, provided each of the 12 elected ward councillors with \$400,000 to allocate to projects at their discretion with little or no formal debate, scrutiny, transparency or accountability. Council staff have stated that the primary purpose of the Scheme was to fund capital works projects that had been neglected in the period prior to the commencement of the Scheme.

The Scheme was introduced without due consideration, leaving it bereft of a long-term strategy for its continuation. However, as ward councillors believed the projects being delivered under the Scheme directly benefited their wards, the Scheme continued to operate until the practice was called into question in late 2013.

Ward councillors facilitated an increase in the level of funding provided over time, first to \$500,000 per ward councillor and then to \$600,000 per ward councillor per financial year (see Table 1).

Table 1

Financial year	Annual allocation made available per ward councillor	Total allocation made available for each financial year (12 wards)	Actual funds allocated for each financial year	Fav (Unfav) variance from total yearly funds made available
2005/06	\$400,000	\$4,800,000	\$4,780,000	\$20,000
2006/07	\$500,000	\$6,000,000	\$6,000,000	Nil
2007/08	\$500,000	\$6,000,000	\$5,995,000	\$5,000
2008/09	\$500,000	\$6,000,000	\$5,992,000	\$8,000
2009/10	\$600,000	\$7,200,000	\$7,200,000	Nil
2010/11	\$600,000	\$7,200,000	\$7,200,015	\$15
2011/12	\$600,000	\$7,200,000	\$7,200,000	Nil
2012/13	\$600,000	\$7,200,000	\$7,200,000	Nil
2013/14	\$600,000	\$7,200,000	\$7,200,000	Nil
Total	\$4,900,000	\$58,800,000	\$58,767,015	\$32,985

Concerns regarding the Scheme

Both current and former Council staff voiced frustration and concern with the Scheme, particularly in regard to its lack of openness, transparency and general governance.

The existence of the Scheme and/or the availability of Scheme funds were never advertised or made known through either Council's website or through local media forums. While Council staff indicated that ward councillors considered that the local community knew of the Scheme's existence (despite it not being publicised), any public knowledge appears to have been facilitated via local networking as opposed to a formal communication strategy.

At an operational level, staff were frustrated with the lack of a formal processes, policies or guidelines with which to adhere. At every other level, Council operations were, and continue to be, governed by appropriately developed policies and procedures. All other decision making, particularly that related to funding, are done so in accordance with considered policies and procedures formulated to provide sufficient governance, protecting both those making the decisions and those directly affected by the outcome of the decisions. However, in regard to the operation of the Scheme, no such policies were developed for the purpose of initially assessing the eligibility or evaluation of proposed projects. Ward councillors were restricted only by the dollar value applied to the Scheme in a particular year and not in regard to the purpose for which funds could be allocated.

Staff were further concerned with the equal provision of funds to each ward councillor irrespective of the varying needs of individual wards. The equal distribution of available funds failed to take into account considerations such as socioeconomic factors, population growth and general infrastructure requirements, nor did it allow for the prioritisation of needs across the municipality. The Inspectorate noted that each ward councillor typically allocated the full amount of funds made available to them in each financial year (see Table 1). Across the life of the Scheme, \$58.8 million was made available to the ward councillors whereby \$58,767,015 was allocated.

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Senior Council staff indicated that ward councillors regularly referred to the annual provision of Scheme funds as “their money” or “my money”. For example, in response to confusion about the source of funding, one recipient queried the availability of ongoing recurrent funding for their particular organisation, to which the ward councillor responded:

“Nah, I’ve been your fairy godmother for years now.”

The ward councillor acknowledged a lack of recognition by the funding recipient by also stating:

“I did notice that I didn’t get a mention in any of your media.”

Instances were identified whereby ward councillors contributed “significant” funding to sporting precincts to upgrade infrastructure in circumstances where those ward councillors had previously been long-term office bearers or had long-term, documented associations with the clubs in question.

Further instances were also discovered whereby funds were directed to private clubs or organisations that did not provide general community-wide benefit (nor were they operating from Council owned premises), but were attended by extended family members of the respective ward councillors.

Following ongoing concerns at a senior level, legal advice was obtained on three separate occasions, in January 2010, March 2013 and November 2013 respectively. Each opinion reached essentially the same conclusions, namely:

- while the Scheme did not infringe any statutory provision of the Act relating to the budget, the practice did not meet more general provisions of the Act, such as sections 3C(2), 3D(2)(c) and 3E(1)(a);
- “with the councillors effectively agreeing on this level of expenditure, and voting to support recommendations of others, they can be seen to have both pre-judged issues, not determining them on their merits, and/or are not necessarily acting in the best interests of the community, bearing in mind that it is the whole of the community”;
- there was significant “reputational risk” to Council by perpetuating the Scheme, as there was a lack of a structured governance process and in the context of a local government sector where a number of integrity and oversight bodies are active; and
- the decision making of councillors could also be called into question, which could lead to a suggestion of “pork barrelling”.

Council staff informed the Inspectorate that ward councillors’ main area of focus of each of the three separate legal opinions was that the legality of the Scheme was not called into question, and little focus was placed on the concerns and warnings raised about the general lack of governance and integrity. As a result of ward councillors’ lack of concern with the issues raised, at no stage were improvements made to the operation of the Scheme.

The Inspectorate notes that Council officers made a number of attempts to highlight the risks associated with the Scheme to ward councillors. However, it is also noted that despite these repeated efforts, no amendments to the Scheme were ever implemented.

Coverage in the local media in September 2013 also generated community concern about the Scheme and the possible impact the Scheme may have had on the general provision of services carried out by Council.

Inspectorate investigation process

The Inspectorate commenced its investigation by seeking all relevant project details from Council for the agreed review period. It also sought to facilitate a series of discussions with former and current ward councillors and Council staff to gain insight into the operation of the Scheme. The current Mayor, a former Mayor and one former ward councillor, as well as selected former and current Council staff, accepted the Inspectorate's invitation to discuss the operation of the Scheme. Other selected former ward councillors, and all current ward councillors, declined the Inspectorate's invitation.

The Inspectorate acknowledges Council's provision of assistance over a prolonged period of time with the investigation. This assistance included access to substantial amounts of information and financial data, access to computer systems, provision of office space and the scheduling of meetings and discussions to clarify individual projects.

Concerns have been raised in regard to the time taken to complete the investigation. This reflects the extent and complexity of projects funded through the Scheme, with each of the 396 projects being thoroughly reviewed at each stage, including:

- the initial project concept;
- inclusion in the budget process and the budget;
- facilitation of project management (including procurement); and
- project completion.

There were delays in the review process as Council initially advised the Inspectorate that 262 individual projects had been allocated Scheme funds during the agreed review period. Upon commencing the on-site review of documentation and financial data in April 2014, the Inspectorate identified a further 134 projects that had also been funded through the Scheme during this period.

Due to the identification of these extra projects, significant time was required by Council to provide the remainder of the relevant information, creating unforeseen delays in the review process.

Findings

The Inspectorate identified critical flaws in regard to the operation of the Scheme by Council. In particular, it:

- did not meet general standards of good governance as it was not open, transparent and/or accountable in that:
 - no formal guidelines, policies, procedures or structured processes were created or implemented to consider eligibility or evaluation of proposed recipients of funding;
 - the Scheme was not formally advertised or promoted within the community;

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- no formal application process was created or implemented;
- annual ward allocations were included in the draft budget without due consideration or formal discussion by other ward councillors;
- prioritisation of community capital works needs was not undertaken as it related to the Scheme, rather decisions were made unilaterally by ward councillors;
- feasibility studies or business cases were not required to be submitted with project proposals for inclusion in the draft budget;
- funding was permitted to be allocated to external entities for the creation or improvement of non-Council owned assets;
- the annual Council budget only captured projects by funding type (ie, capital, non-capital, disbursement), therefore they were not independently identifiable as Scheme allocations;
- Council staff:
 - felt undue pressure from ward councillors to comply with funding requests; and
 - were not provided with adequate information to appropriately scope projects prior to inclusion in the draft budget; and
- the reallocation of funds process:
 - lacked formal debate;
 - lacked detailed information justifying the proposed reallocation in Council meeting minutes; and
 - was not accompanied by a business case or feasibility study to support the amendment to the original allocation purpose;
- exposed Council to risk, in particular reputational risk, potential fraud and/or potential corruption:
 - Council failed to amend Scheme practices after receiving three independent legal opinions which were critical of the practice;
 - while not compelled to do so, councillors failed to implement reasonable staff proposals incorporating governance processes around the Scheme practice;
- was inconsistent with a positive furtherance of the following general objectives of a council as set out in section 3C(2) of the Act, in that it failed to ensure:
 - that resources were used efficiently and effectively;
 - that services and facilities provided by Council were accessible and equitable; and
 - transparency and accountability in Council decision making; and

- was inconsistent with Council’s strategic planning processes in that:
 - it allowed for ongoing expenditure that was not in line with the Council Plan, its carefully considered long term strategies or prioritisation processes to rank competing needs across the entire municipality; and
 - it created assets that committed Council to recurrent funding to ensure the ongoing upkeep or maintenance of the newly created facilities, irrespective of whether they were due for funding through Council’s normal asset creation/renewal cycle.

Notwithstanding the concerns identified, in line with the legal advice provided to Council the Inspectorate found that the implementation and carrying out of the Scheme was not in direct contravention of the budget provisions of the Act. Further, upon the full forensic investigation of the 396 projects (comprised of 623 individual funding allocations) made from the Scheme over the three-year review period, the Inspectorate:

- did not identify any activity that it considered to be fraudulent;
- did not identify any activity that it considered to be a misuse of position in breach of section 76D of the Act;
- did not identify examples of ward councillors having a conflict of interest in terms of the Act in the allocations provided to groups or organisations, despite perceptions or the potential for a conflict of interest to exist; and
- found that following budget approval, project management and supplier engagement was carried out in accordance with section 186 of the Act and, in most instances, with Council’s internal policy and procedure requirements.

The *Local Government Amendment (Governance and Conduct) Bill 2014* (Vic), introduced to Parliament but not enacted¹, proposes a new section to the Act whereby “a Council must not adopt or implement a policy under which a Councillor is allocated a fixed or other amount of funds for the purpose of enabling the Councillor to nominate:

- (a) a particular person, body or organisation to whom the funds are to be paid; or
- (b) a particular fund in respect of which the funds are to be applied.”

The overall findings of the Inspectorate support the proposed legislation, which would no longer permit the inappropriate and discredited practice of councillor discretionary funding to continue. This is also in line with the recommendations in the Inspectorate Report into councillor discretionary funding released in October 2013.

¹ The *Local Government Amendment (Governance and Conduct) Bill 2014* (Vic) was introduced to Parliament on 1 April 2014. As at the date of the publication of this report, this Bill had not been passed.

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1. The investigation

1.1 Minister's letter and terms of reference

On 13 November 2013, the former Minister for Local Government wrote to the Acting Chief Municipal Inspector in regard to Council's discretionary funds practice. In the letter, the Minister requested that:

"... given the extent of funding available to be allocated under this scheme, I ask that the Inspectorate forensically investigate actual expenditure under the scheme compared with what was budgeted by the Council, dating back to the program's inception, for compliance with the Act."

The agreed terms of reference for this investigation were to:

- investigate and advise in relation to the operation of the Scheme since inception;
- fully investigate and advise in relation to each individual allocation made between the 2011/12, 2012/13 and 2013/14 financial years;
- advise on any other matters arising during the course of the investigation; and
- report on all matters captured above.

1.2 Scope of work

Following discussions between the Inspectorate and Council, and with the Minister's agreement, the investigation focused on a full investigation of all individual Scheme allocations made during the 2011/12, 2012/13 and 2013/14 financial years. Allocations were made to 396 projects during this period.

In addition to the 396 projects, the investigation considered the implementation and the operation of the Scheme in its entirety. Council committed to making all requested documentation available at its earliest convenience.

The investigation was primarily undertaken at Council's principal office and consisted of:

- the comprehensive investigation of the 396 projects (comprised of 623 individual allocations) made under the Scheme between the 2011/12 and 2013/14 financial years; and
- discussions with selected current and former Council staff and councillors.

2. Context

2.1 Local Government Victoria circular

In May 2006, the former Executive Director of Local Government Victoria and Community Information published a Circular regarding CDF practices. The Circular followed reports that a number of councils had adopted the practice of providing funds to be allocated at the discretion of individual councillors or ward councillors.

The Circular confirmed that expenditure may only be incurred by a council, special committee or members of staff by delegation. It reiterated that a council could not delegate the power to incur expenditure to an individual councillor or group of councillors, such as a ward, unless the group is properly established as a special committee. It had been identified that in cases where councils had adopted guidelines for administering councillor spending of discretionary funds, some councils had not implemented adequate controls as, "they appear to allow individual councillors to actually commit the council to an expense."

Finally, the Circular advised that it was essential that councils implementing such policies ensure effective accountability measures are in place and that spending practices comply with the Act. Practices were not to allow for individual councillors to incur expenditure and, as a minimum, should provide for formal approval by council resolution prior to a commitment to incur expenditure.

2.2 Inspectorate review and report

In November 2012, the Inspectorate responded to ongoing concerns within the local government sector by conducting a formal review of CDF practices across all Victorian local councils. This review was initiated to ensure that discretionary spending by councillors was accountable, transparent and complied with the general requirements of the Act. There were no explicit provisions in the Act prior to, or following, the Circular prohibiting discretionary or ward funds. However, councils have a responsibility to strive to achieve the principles of local government as set out in section 3C of the Act, which include:

- "(1) The primary objective of a council is to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.
...
- (2)(b) ... to ensure that resources are used efficiently and effectively and services are provided in accordance with Best Value Principles to best meet the needs of the local community.
...
- (2)(e) ... to ensure that services and facilities provided by the council are accessible and equitable.
...
- (2)(g) ... to ensure transparency and accountability in council decision making."

Councils that do not require councillors to seek formal approval via a council resolution, or do not create and implement appropriate approval guidelines, are exposed to risks. These include potential fraudulent

or corrupt practices by individual councillors, whereby funds may be committed to self-interest groups, and reputational risk if public funds are misspent. In addition, councillors are also at risk of breaching several other sections of the Act, such as:

- section 140(2)(c), which imposes a duty on councils to do all things necessary to ensure that public funds are correctly expended and properly authorised; and
- section 76D(2)(e), which states that circumstances involving the misuse of position by a person who is, or who has been, a councillor includes using public funds or resources in a manner that is improper or unauthorised.

The Inspectorate encouraged councils to self-disclose as to whether they operated a ward or discretionary funding program, provide details of how the program operated, and confirm what involvement councillors had in the decision making or the funding allocation process.

Having completed the initial review in early 2013, the Inspectorate shared its preliminary findings with all councils that had been identified as having a CDF program in place, and allowed them the opportunity to provide feedback where appropriate. Feedback from councillors and Council Audit Committees was also considered. In particular, councils were requested to explain how their CDF processes were open and auditable, and whether a CDF program was necessary given that alternative funding programs were available.

Upon completion of the review, the Inspectorate Report was published. Amongst its findings, it outlined the characteristics of an accountable CDF program, including:

- the requirement for a formal application process;
- the provision of an eligibility criteria policy;
- the transparent assessment of applications;
- public reporting of grant recipients;
- a transparent acquittal process; and
- the provision of strict conflict of interest disclosure requirements.

As part of the review, Greater Geelong City Council confirmed the existence of its Community Grants Program ('CGP'), which provided the sum of \$240,000 annually (\$20,000 to each of the 12 wards). The CGP was described by Council staff as allowing councillors to participate in the decision making process, however not at their sole discretion.

Following a review of the CGP, in the Inspectorate Report the Inspectorate provided the following commentary regarding the CGP:

- "Council has a stringent application process which is detailed on its website.
- Council staff receive and assess applications and deliver recommendations to Councillors, who then approve or reject applications.
- Reports on Councillor-approved funding requests are endorsed by Council resolution.

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- Once Council approves applications, council staff organise payment.
- ... council has strict, clear policies which are available publicly, as are its assessment criteria for applications, including the weighting given to particular aspects of each application.
- Individual Councillor discretion is minimal, which protects against integrity risks. No applications are made directly to any councillor.
- ... acquittal reports are required by Council.”

The Inspectorate commended Council for operating a program with strict guidelines in place, which allowed councillors to participate in the process but did not provide them with the opportunity to commit funds at their own discretion.

Throughout the 12 month CDF review, Council did not disclose to the Inspectorate its Community Priorities Scheme. However, immediately prior to publishing the Inspectorate Report, the Inspectorate became aware of the Scheme and its independence of the CGP. At that time it was revealed that the Scheme provided the 12 ward councillors each with \$600,000 as part of the annual budget process to allocate to various projects as nominated by them.

Former Mayor Keith Fagg was critical of the Scheme in a letter to the Premier in August 2013:

“There is no public application process, no business modelling for most projects and little rigorous testing normally expected for the expenditure of public funds. It is essentially the ward councillor alone who determines where these funds are allocated.”

A series of articles published in local media in September 2013 also generated community awareness of the Scheme which had not existed previously, and the possible impact the Scheme may have had on the general provision of services by Council to the community.

The Inspectorate sought confirmation from Council regarding the operation of the Scheme. Council stated that the Scheme did not operate as a grants program but provided funding for specific “named” initiatives that were approved in the annual budget. Council further stated that they considered the Scheme process to be transparent as allocations were subject to public scrutiny via the budget and the submission process under section 223 of the Act.

Upon request, documentation was provided to the Inspectorate confirming that between the 2005/06 and 2013/14 financial years, approximately \$59 million was provisioned for in the budget for councillor allocation through the Scheme. Council staff confirmed that ward councillors were permitted to allocate, at their discretion, funds to projects within their ward up to the amount provisioned per annum.

On 13 November 2013, the former Minister for Local Government requested that the Inspectorate investigate the Scheme.

The Inspectorate was requested to undertake a full investigation of all individual Scheme allocations made during the 2011/12, 2012/13 and 2013/14 financial years. While not formally requested, the Inspectorate also aimed to gain insight into the implementation of the Scheme and its operational workings from inception.

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Council committed to making all requested documentation available. Discussions were also to take place with past and present councillors, as well as Council staff, as required. The Inspectorate formally commenced its investigation on site at Council's offices in April 2014.

3. Introduction and development of the Scheme

3.1 Background to the Scheme

The Scheme commenced in 2005. While there is little documentation defining the origins of the Scheme or the purpose for which it was implemented, discussions with staff members employed by Council at the time provided valuable insight.

The Greater Geelong City Council was subject to considerable financial constraints leading up to the implementation of the Scheme in 2005. In the early 1990s, the municipality was severely impacted by financial crisis, including the collapse of the locally based Pyramid Building Society. The Greater Geelong City Council was formed in 1994, as a result of the amalgamation of six smaller regional councils as part of a state-wide reform of local government. The amalgamation, plus the introduction of compulsory competitive tendering, led to significant staff redundancies. It was claimed by Council staff that these adversely impacted on Council finances, both directly and through an unfunded call on a superannuation scheme. Council's borrowings at that time were estimated to be in excess of \$25 million. As one Council staff member described, "the financial position of the city from a cash point of view [had] deteriorated significantly." Tight financial controls were implemented and, as a result, there was minimal discretionary funding made available.

During this period Council invested in extensive improvements to its IT systems, including the development of an integrated asset management system, an integrated property valuations and planning system, and an upgraded financial system. One senior Council staff member noted that funds for these much needed improvements meant less funding for community projects.

Council also established a number of strategic priorities, especially ventures attempting to remarket Geelong. One such initiative, from 1998 to 2003, aimed to establish an off-shoot of the Guggenheim museum in Geelong. The proposal lapsed after Council withdrew its support amid public criticism of the bid.²

The election held in November 2004 resulted in six new ward councillors being elected onto Council. A key election issue was a perceived lack of spending on local recreational and sporting activities and facilities. Many sporting organisations seeking Council funding had had their requests declined on the basis of Council's financial position and Council's commitment to regional facilities, including the \$4 million Kardinia Aquatic Centre and the \$6 million Stage 1 of Simonds Stadium. Council staff have advised that a small number of sporting clubs sought to pursue improvement projects and requested that Council, as a landowner, act in a guarantor capacity, requiring Council to declare these guarantees as contingent liabilities.

Council staff acknowledged that the six new ward councillors entered Council, "on platforms of delivering for their communities... Council [was] not delivering [and the new councillors would] come in and deliver projects..." However, Council staff also reported that following the election, "there was significant friction ... in the Council chamber about a whole list of competing priorities." Council staff suggested that ward councillors' frustration was heightened by the development of a range of recreational facility master plans

² See e.g. Jane Emerick "Cousins: Guggy show Geelong's huge loss" *Geelong Star Community* 19 April 2008

for projects at a time when Council did not have the capacity in the short to medium term to implement them.

3.2 Implementation of the Scheme in 2005/06

The 2005/06 budget process commenced with the standard Council budget briefings and meetings early in 2005. Council officers proposed a range of projects with business cases to be funded in the capital works program. Council staff reported that ward councillors were unable to reach a consensus on which projects would receive funding, and did not support the officer proposals. As the Council structure was made up of 12 wards, each with its own ward councillor, the prioritisation of projects across the municipality proved problematic. Council staff perceived that each ward councillor was beholden to their own community and sought to promote their ward interests above those of the municipality as a whole. Staff described the situation as a disconnect between the capital works program developed by Council staff and the short-term funding requirements identified by the ward councillors.

Council staff informed the Inspectorate that ward councillors sought alternative means to facilitate community expenditure. Ward councillors convened an informal meeting to discuss immediate funding priorities. Council staff reported that following the meeting, ward councillors requested that the finance department remove \$5 million from the capital works component of the budget. This funding was to be applied to "a range of projects", with funding to be prioritised and ultimately allocated at the ward councillors' discretion. Council staff explained that, at this point, ward councillors felt they had a better understanding of the community's funding needs, and that by providing the ward councillors with the capacity to allocate funds at their discretion, there would be greater opportunity to meet these needs. Council staff indicated that, in particular, ward councillors, "wanted to be able to direct more funding into the community based activities of groups/organisations", which was in contrast to Council's formal prioritisation process.

As a result, a total of \$4.8 million was made available to the ward councillors for discretionary spending. To ensure equality, each received an equal sum of \$400,000 for allocation within their respective ward.

Allocations were not subject to an individual approval process or Council resolution. However, ward councillors considered transparency to be achieved via the inclusion of the allocations within the budget, as the budget was subject to a formal adoption process. In that regard, the Inspectorate notes that neither individual Scheme projects were categorised, nor were individual allocations disclosed in the budget.

No spending strategy was formulated during the first year of the Scheme. According to Council staff, there was insufficient time for any separate form of strategic long-term planning as Council was already in the process of finalising its 2005/06 budget. The Inspectorate considers that decisions to allocate funds to certain projects were made by ward councillors on an ad hoc basis, only taking into account their own perception of the merits and priority of the proposals. It appears that, at that time, ward councillors did not seek input from Council staff when determining spending priorities.

Council staff informed the Inspectorate that, while not formally documented, the initial purpose of Scheme allocations was to address the backlog of:

"... run down assets that needed to be renewed or refreshed. Work hadn't been done on them in many cases since amalgamation."

As noted by one Council staff member:

“It was more about a response to the immediate issues at hand ... we weren’t making a strategic long term decision. We were making an immediate decision about dealing with the areas in which there had previously been a shortfall of funds allocated.”

No formal title was given to the Scheme at this point, nor was a formal policy or any guidelines created or implemented to support the allocation process. However, Council staff indicated that ward councillors informally agreed that Scheme allocations would be made to capital works projects that were:

- of the ward councillor’s choice;
- located on Council-owned facilities; and
- aligned to Council’s wider policies and objectives.

As there were no formal eligibility requirements to be satisfied, ward councillors simply emailed a draft list of ward funding proposals to the finance department for inclusion in the draft budget. There was no additional oversight or vetting of the proposed funding lists by the senior management team.

In the first year, 29 of a total of 67 Scheme allocations funded sporting assets and facilities, with expenditure on these projects totalling approximately \$2.7 million of a total expenditure of \$4.8 million. This was an area identified as having been underfunded in the preceding years and, as staff suggested, ward councillors felt they could have the biggest impact in the short term by funding such projects. Despite being identified as an area of need, there was no formal prioritisation process to determine which assets or facilities had the greater funding requirements across the whole of the municipality. This allowed ward councillors to determine priorities within their own ward only, without taking the needs of other wards into consideration, or working collectively to determine needs and priorities of the municipality as a whole. The advent of the Scheme allowed certain projects to ‘jump the queue’, therefore bypassing standard asset upgrade prioritisation timetables.

With no policy or guidelines in place, ward councillors were not restricted in any manner or required to align funding to a formal prioritisation process in the initial phase of the Scheme. The only semblance of structure being that ward councillors were often guided by master plans created by Council staff in line with Council’s long term strategy. Where Council staff identified an asset or facility that required development or upgrade, a master plan would be formulated detailing the various components. In the case of sporting facilities, such components might include a pavilion, car park, ground surface, lighting, practice facility, etc. These plans were created on an ‘as needs’ basis as prioritised through Council’s existing capital works schedule at that time. In the initial years of the Scheme, funding was often directed to assets or facilities that had previously had master plans formulated.

3.3 The 2006/07 budget

Council staff stated that ward councillors were satisfied with the outcomes generated from funding allocations in the Scheme’s first year and strongly supported its retention.

Prior to the 2006/07 financial year, ward councillors successfully requested to increase the existing total provision of \$4.8 million to \$6 million per annum, resulting in an increase of \$100,000 to each ward councillor (see Table 1). As with the initial provision of \$400,000 to each ward councillor, the subsequent increase was not subject to a notice of motion or separate resolution of Council. Projects were included

for consideration and adoption as part of the annual budget process, which was formally adopted by Council.

No governance structure was applied as the Scheme moved into its second year of operation. The practice continued to lack visibility and a defined process or policy.

3.4 Evolution of the Scheme

Table 2

Year	Actual funds allocated for each financial year	No. of capital projects funded	Total value of capital projects funded	% of total allocation	Average value of capital project allocation	No. of non-capital projects funded	Total value of non-capital projects funded	% of total allocations	Average value of non-capital project allocation
05/06	\$4,780,000	57	\$4,609,000	96.42%	\$80,859	10	\$171,000	3.58%	\$17,100
06/07	\$6,000,000	49	\$5,590,000	93.17%	\$114,081	13	\$410,000	6.83%	\$31,538
07/08	\$5,995,000	55	\$5,215,000	86.99%	\$94,818	29	\$780,000	13.01%	\$26,896
08/09	\$5,992,000	70	\$4,958,180	82.75%	\$70,831	39	\$1,033,820	17.25%	\$26,508
09/10	\$7,200,000	65	\$5,226,203	72.59%	\$80,403	104	\$1,973,797	27.41%	\$18,978
10/11	\$7,200,015	70	\$5,187,583	72.05%	\$74,108	119	\$2,012,432	27.95%	\$16,911
11/12	\$7,200,000	54	\$5,336,820	74.12%	\$98,830	104	\$1,863,180	25.88%	\$17,915
12/13	\$7,200,000	68	\$4,999,700	69.44%	\$73,525	83	\$2,200,300	30.56%	\$26,509
13/14	\$7,200,000	87	\$5,473,000	76.01%	\$62,908	74	\$1,727,000	23.99%	\$23,337

In each of the 2007/08 and 2008/09 financial years, a provision of \$500,000 per ward councillor was made through the budget (see Table 1), with a continued focus on projects that were of benefit to individual wards. In addition to their ward responsibilities, each ward councillor had one or more municipal portfolios, for example sport and recreation, arts and culture, communications, education and youth or multicultural affairs. In the 2009/10 financial year ward councillors requested a further increase of \$100,000 per ward councillor per financial year, with the requested increase to fund various portfolio initiatives that were not necessarily captured through ward funding (see Table 1).

Similarly, as with the previous increase, this further increase to \$7.2 million per annum was accepted by Council without formal documentation but adopted as part of the budget process. It was expressed to the Inspectorate that senior management fundamentally did not support this further increase, however they facilitated the increase without formally challenging ward councillors.

No policy or guidelines were implemented to support the provision of the increased funds, nor was consideration given to formalising a reconciliation process that would ensure that the extra funds were utilised for the purpose for which they were made available. As a result, no restrictions were placed on ward councillors in the allocation of the \$600,000, leaving no requirement to demonstrate that the expenditure of the extra \$100,000 aligned with the ward councillor's current portfolio responsibilities.

While not mandated, at times ward councillors would consult Council staff in regard to proposed funding to seek guidance. However, it was very much in a consultative capacity as staff were limited in their ability to influence decision making, as the responsibility for the allocation of funds continued to remain at the sole discretion of the ward councillor.

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While not resulting from a directive from Council, the nature of projects being funded appeared to change over time. During the initial years of the Scheme, while no policy or formal strategy was in place, ward councillors would often identify where they could align Scheme allocations with existing master plans. It was identified that the change occurred prior to the 2009/10 budget whereby there was less reliance on master plans to determine where funding was allocated, leading to less funding being allocated to capital works projects across the municipality. This resulted in an increase in the number of projects funded through Scheme allocations, and a decrease in the average dollar value per allocation.

A high level analysis of all individual allocations submitted as part of the budget since inception was undertaken by the Inspectorate. To conduct the analysis, the Inspectorate established two separate timeframes: the 2005/06 – 2008/09 financial years and the 2009/10 – 2013/14 financial years. The Inspectorate compared the types of projects to which allocations were made, and dollar value of those allocations, between these timeframes.

Council documents define a:

- capital works project as “income or expenditure that creates a new asset or improves and/or provides a change in the original functional performance and condition of the asset”; and
- non-capital works project as “discretionary operating income and expenditure defined as a one-off, ad hoc project and where the project life is fixed.”

The Inspectorate concluded the following shifts in types of projects and expenditure set out in Table 3.

Table 3

	2005/06 – 2008/09	2009/10 – 2013/14
Total number of capital projects funded	231 (71.74%)	344 (41.50%)
Total amount of expenditure on capital projects	\$20,372,180 (90%)	\$26,223,306 (72.5%)
Total number of non-capital projects funded	91 (21.26%)	485 (58.50%)
Total amount of expenditure on non-capital projects	\$2,394,820 (10%)	\$9,776,709 (27.5%)
Average number of projects financed per ward councillor via the Scheme on a yearly basis	6.7	13.8
Average dollar value per allocation	\$70,844	\$43,425

A briefing note for ward councillors prepared by senior management on 20 July 2010 entitled ‘*Review of the 2010-2011 Budget Development Process*’ (**Briefing Note**) identified this change in project expenditure, stating, “... a large number of lower cost disbursements were identified that may also raise expectations in the community of ongoing recurrent funding.” The Inspectorate viewed correspondence that suggested that funding recipients had an expectation that some allocations would be recurrent through the standard budget process, and were not subject to availability through the Scheme or solely at the ward councillors’ discretion.

Senior staff did not support the increase in the number of disbursements funded, and in discussions with the Inspectorate stated that, “the disbursements were the wrong process”, “we had a disbursement program, but it became a grey area because councillors were adding to that disbursement program through priority projects”, and “the disbursements were really seen originally as a means by which we can reward community groups for delivering services on behalf of councillors, and they could do it using volunteer labour for a lower cost than what Council [could].”

As evidenced by Council documentation, by the 2009/10 financial year a number of the master plans for the capital works projects had been fully completed. Ward councillors began to distribute Scheme funds more broadly, including financing initiatives such as arts projects and Christmas holiday events. One senior staff member describes this fundamental shift as follows:

“[Initially] we were doing a lot of capital works, bricks and mortar type things in the community. There was no issue with the fact that they were on Council land, they were capital projects, they were budgeted for [and] they had good plans behind them. Then over the years, it sort of moved into disbursements, so giving money to a group that would be doing something on behalf of the community. There was that money ... going through for activities or projects ... where communities were funding festivals and that sort of thing.”

Consistent with the lack of formal guidelines or strategies for the Scheme, this shift was never formally debated or approved by Council. In the period up to the 2009/10 financial year, a small number of funding allocations to non-capital projects had been made, despite the fact that the Scheme had not been created for that purpose. The Inspectorate identified a marked increase in the number of allocations to non-capital works projects after this period. While staff had concerns regarding the Scheme generally, this change led to greater disquiet among Council staff on two main grounds.

Staff voiced concern about the shift away from areas such as major sporting infrastructure improvements to non-capital projects such as festivals and arts and culture. While certain sections of Council were pleased that other areas were receiving a much needed injection of funds, the premise of the Scheme was still considered to be for capital projects that would bring about the creation or improvement of Council-owned and controlled or managed assets. The \$7.2 million in funds was assumed by Council staff to be 100% capital works projects at the commencement of budget deliberations.

Staff expressed further concern in that private groups or organisations such as bowling or multicultural clubs were eligible for Scheme funding. It was considered that private entities should not qualify as this meant supporting assets that were not owned by Council. As a result, these assets were of limited benefit to members of the wider community who would not directly connected with the private entities and would not have access to the facility. The funding of non-service type activities was also questioned.

3.5 Proposals for amendment

It took until early 2009 for Council to consider implementing improvements to the annual operation of the Scheme. Borne out of staff frustration and internal belief that the Scheme lacked formality in its execution, Council staff sought to provide rigour and transparency to the practice.

3.5.1 2009: Pro forma

On 18 March 2009, the then General Manager Corporate Services circulated a memorandum to ward councillors entitled 'Project Concept Pro Forma' (**Memorandum**). The Memorandum detailed a proposed new process, which had two predominant features:

- the requirement for councillors to complete a 'Pro Forma' document for each project (**Pro Forma**). The Pro Forma called for ward councillors to provide:
 - a brief description of the process;
 - objectives;
 - expected outcomes/benefits;
 - business urgency;
 - alignment to plans or strategies;
 - an estimated net cost of the project; and
 - any additional supporting comments; and
- the pairing of ward councillors with general managers in order to assist with the preparation of the above information for the nominated projects.

One senior staff member described the above proposals as providing "a solid process", as other ward councillors and senior staff members would have a clear overview of all projects receiving Scheme funding. This had not previously been the case.

Council staff advised that despite the benefits to be gained from the proposed process improvements, ward councillors rejected both proposals. As a result, the non-transparent process of drawing up single lists of proposed projects to be emailed to the finance department for inclusion in the budget process remained in place.

3.5.2 2010: Budget process review

As indicated in section 3.4, on 20 July 2010, senior management prepared the Briefing Note. In defining its purpose, the Briefing Note stated that:

"It is appropriate, given the scale and impact of the annual budget, to conduct a review both internally with council officers and also with councillors. The review should highlight areas for continuous improvement and what changes should be agreed and implemented as part of the 2011-12 budget development process."

The Briefing Note reviewed certain procedures undertaken by ward councillors in determining the budget and proposed methods in which the budget development process could be improved, including various improvements to the Scheme.

The Briefing Note described the process for developing ward councillor priorities. While it commented on engagement between ward councillors, general managers and other council staff, it confirmed that

changes to projects, project descriptions and funding amounts “were being made right up to the final budget briefing session”, thus creating potential time critical delays in the budget process. Further:

“... a downside to the councillor priority process was that projects were not thoroughly scoped, costed, and prepared in a similar manner to concept proposals developed by council officers and captured in the project management system. This in turn may result in some confusion and uncertainty regarding what the expected outcomes are for the project, leading to delays.”

While this issue was formally raised at the senior level in July 2010, it is an issue that had been present since the inception of the Scheme in 2005.

To offset this drawback, the Briefing Note proposed that ward councillors should:

“... bring forward funding of projects which are already identified as part of the long term plan but not included in the budget period. Links to the long term plan would assist in the planning and scoping of councillor priorities.”

The Briefing Note went on to assert that:

“Comment was made during the budget process of the conflict between ‘one-off’ councillor funding priorities versus recurrent funding requests. This was particularly relevant with contributions to the Geelong Regional Library Corporation and the Geelong Art Gallery where Council is requested to remit recurrent contributions.”

Significantly, the Briefing Note further identified that:

“Councillors recognised that there is a need to create some rules or guidelines relating to community priorities for future budget development.”

Finally, the Briefing Note proposed a rebalancing between the Community Grants Program and the Scheme:

“Councillors may also wish to consider increasing funding to [the CGP] from current levels of \$20,000 each to \$50,000. This one off discretionary funding could form part of a solution to exclude nominating disbursements when identifying councillor priority projects. [Scheme funding] would need to reduce by \$360,000 [per ward councillor per year] if this change was adopted.”³

As detailed in the Briefing Note, ward councillors had recognised the need to improve the process by which Scheme priorities for future budget development were determined, however no action was taken by ward councillors to facilitate change to the process. As raised in the Briefing Note, discussions were held between general managers, ward councillors and, from time to time, with other Council staff in regard to Council nominated projects. However, email evidence indicates that while Council staff offered to schedule meetings to assist with finalising project lists, these offers of assistance did not appear to have been routinely accepted by all ward councillors.

³As indicated earlier, the CGP is separate and distinct from the Scheme. The CGP has an allocation of \$240,000 per financial year divided equally among the twelve wards. The objective of the CGP is to provide an opportunity for a wide range of not for profit community groups to obtain funding from Council for a variety of projects that are intended to benefit the wider community. Groups are able to apply for funding throughout the year. The majority of the funding through the CGP is minimal, typically between \$500 and \$3,000 per application. The CGP is publicised regularly and reports are presented at Council meetings and released to the media.

In early March 2011, ward councillor and staff responses to issues raised in a questionnaire that had been circulated in late 2010 were amalgamated and detailed in a document entitled '*2011-2012 Budget Process Overview*' (**Budget Process Overview**). This reported that amongst a number of outcomes agreed upon, the following were directly related to the Scheme:

- "to provide general support to increase [the amounts made available under the CGP] from \$20,000 to \$40,000;
- general agreement for councillor priorities to focus on capital expenditure."

No documented changes were made subsequent to the issuance of the Budget Process Overview.

3.5.3 2011–12: Response to VAGO Report

In September 2011, the Victorian Auditor-General released the VAGO Report (referred to at page iii of the Executive Summary) which examined four Victorian local councils to ascertain whether they had effectively integrated and considered the long-term sustainability of selected investments, including the development of precise and reliable forecasts and budgets. The VAGO Report provided several recommendations, including that councils establish various controls to ensure that their plans and budgets meet industry and government best practices.

Council responded to the VAGO Report by creating a working group consisting of several senior managers. The working group emphasised that many budget proposals did not provide enough detail for Council or the community to accurately understand the ongoing renewal, operational and maintenance costs of a particular project. The working group proposed that any expected maintenance and operating costs associated with new capital works projects or discretionary projects be clearly documented and recognised as part of the approval process prior to being incorporated into the 2012/13 budget.

As a result of the VAGO Report and the subsequent internal review, the working group proposed the following changes to the City Plan and budget process:

- City Plan and adopted strategies should set ward councillor funding priorities;
- Council officers should be invited to assist ward councillors to scope and cost priorities consistent with the budget timetable each year;
- budget concepts must scope any impact on ongoing recurrent costs and those estimates should be considered prior to the acceptance and incorporation of a proposed project into the 2012/13 budget;
- a review of community engagement strategies with any changes to be implemented as a prelude to the 2013/14 City Plan / budget process; and
- the creation of access opportunities to incorporate 'best value' principles into consideration of recurrent services for 2013/14.

These proposals were discussed as part of a ward councillor planning day held at the National Wool Museum on 10 February 2012. The focus was on Council's long-term financial plan and the budget for the 2012/13 financial year. Council staff emphasised the importance of the proposals, as "proposed Scheme allocations needed to have some real business planning and some real scoping ... and we needed to look at municipal wide projects rather than just the ward."

Council staff have indicated that ward councillors rejected the proposals of both the VAGO Report and the working group. One staff member stated in a discussion with the Inspectorate that ward councillors, “were not at all engaging [in a discussion regarding changes to the budget process]”, and that “it was never taken ... seriously as a long term plan. [The ward councillors] just wanted to have a look at year to year.”

3.5.4 Scheme title

Although it appears that ward councillors refused to integrate the proposals of the VAGO Report and working group into the budget process, they informally agreed to amend the name of the Scheme. The Scheme had been referred to by several different titles since its inception. During the Scheme’s initial phase it was not identified as a ‘scheme’ but as part of the budget process, and therefore was not designated a title. Over several years ward councillors and Council staff had begun referring to the Scheme as ‘Councillor Ward Funding’ or ‘Councillor Priority Funding’. Following the councillor planning day in 2012, ward councillors and staff would henceforth refer to the Scheme as the ‘Community Priorities Scheme’.

Whilst the Scheme was referred to by a formal title, no action was taken to formalise the practices of the Scheme.

3.6 Legal advice

3.6.1 January 2010 advice

Following ongoing concerns by senior management, Council engaged a legal firm to review Scheme practices. Councillors have confirmed in writing that this was requested to ensure all budgetary and financial auditing processes were being adhered to and were not in breach of the Act. This advice was provided on 15 January 2010 (**Initial Legal Advice**).

The Initial Legal Advice stated that the Scheme was not in breach of any statutory requirements of the Act as any expenditure proposed by ward councillors was disclosed in the draft budget, which was advertised and could be subject to public submissions under section 223 of the Act. The proposed expenditure was therefore subject to any changes that may occur as a consequence of the section 223 procedure, and was shown in the adopted budget.

However, the Initial Legal Advice identified the following issues with the Scheme:

- “ the ... adoption of the practice removes from the area of Council debate consideration of how the proposed councillor expenditure fits with the overall budget process”;
- the Scheme “... creates an environment in which a Councillor can be put under inappropriate or improper pressure from particular interest groups or individuals to nominate an item of expenditure in a context where the practice takes Council’s scrutiny of the expenditure and a balancing of competing claims, required as part of any budgetary process off the table”; and
- while the Scheme does not infringe any statutory provisions of the Act relating to the budget, the practice does not meet more general provisions of the Act, such as:
 - section 3C(2)(b) and (e) of the Act which, in defining the objectives of council, relevantly provides that in seeking to achieve its primary objective a council must have regard to the following facilitating objectives:

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- ensuring that “resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community”;
- ensuring that “services and facilities provided by Council are accessible and equitable”;
- section 3D(2)(c) of the Act, which relevantly provides that the role of a council includes, among other things, “maintaining the viability of Council by ensuring that resources are managed in a responsible and accountable manner”; and
- section 3E(1)(a) of the Act which, in defining the functions of a council, relevantly provides that a council should advocate and promote, “proposals which are in the best interests of the local community.”

The Initial Legal Advice went on to state that:

“Although it is probably overstating the operation of the councillor conduct and interest provisions of the Act found in Division 1A of part 4 of the Act (section 76BA), to say that they are of direct application, it is instructive, when testing the practice against required standards of conduct of Councillors, to consider that Councillors must:

- (a) avoid conflicts between his/her public duties as a councillor and his/her personal interests and obligations . . .

...

- (e) endeavour to ensure that public resources are used prudently and solely in the public interest . . .

...

- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of council.”

While not explicitly condemning the practice, the Initial Legal Advice declared that:

“Having regard to the sections of the Act referred above and general principles of proper public administration, [it is advised] that any practice which sees the determining body accept without challenge budgetary proposals of one of their numbers up to a certain value, is not consistent with the proper discharge of a councillor’s functions and conflicts with a municipal council’s obligations to ensure the efficient and effective equitable use of resources. The practice also ... invites relationships and potential councillor actions, which would or could be in breach of the councillor conduct provisions of the Act.

The solution to the problem does not mean the outcome of the budgetary process has to change, merely that all items of potential expenditure shown in a draft budget must be open for genuine debate in the budget formulation and adoption process.”

The Initial Legal Advice was circulated to all ward councillors and the senior executive management team. Officers highlighted the issues raised with ward councillors, in particular the reputational risk to

Council through the administration of a practice that did not promote absolute transparency, and could call into question the ethics of a ward councillor. However, Council staff have stated that despite being made aware of the issues with the Scheme, ward councillors did not seek to implement improvements to the governance of the process.

Council staff reported that ward councillors focused on the part of the advice that stated that the Scheme was not in breach of the Act and that, as the Scheme was by now an embedded practice, they saw no requirement to make any changes. Despite the warning, no amendments were implemented for the impending 2010/11 budget process.

3.6.2 March 2013 advice

A general election occurred on 27 October 2012, whereby three new ward councillors were successful, along with a new publicly elected mayor. Following a review of the Scheme and discussions with senior management, the Mayor voiced concerns and requested that the Initial Legal Advice be revisited (a fact disputed by ward councillors who also claim to have facilitated obtaining further advice, "to again ensure that there were no breaches of the ... Act.").

On 4 March 2013, a second legal advice was provided to Council from the original legal firm (**Second Legal Advice**).

The Second Legal Advice fully endorsed the Initial Legal Advice, stating that it, "accurately reflected the position at law, which is that the Scheme is not consistent with a Councillor's functions, and conflicts with the obligation to ensure efficient and equitable use of resources."

The Second Legal Advice stated that:

"To reinforce the earlier advice, which obviously, as the practice has continued, has not been accepted on its face value, I raise for consideration the following further issues ...

First, the Act imposes obligations on council and councillors to '...achieve best outcomes for the local community...' In this sense, the community is clearly not a ward, but the whole of the municipal district. It is arguable that where a significant expenditure is tied to a particular ward it cannot be said that the funds are being allocated purely for the benefit of the whole community. It is my understanding that service provision and the needs across the municipal (sic) are not being distributed equally.

Secondly, I think it imperative given the underlying obligations of councils and councillors under the Act, that at all times they should act in accordance with the intent of the legislation. To rely on a narrow legalistic interpretation is not necessarily appropriate. In particular, reliance should not be placed on comments such as that contained in [First Legal Advice] that '... the practice ... is I believe, not in breach of any statutory procedural requirement...' Rather, the council should be guided by principles such as those expressed by the Victorian State Ombudsman Mr GE Brouwer in his report to the Victorian Parliament in relation to the alleged improper conduct of councillors at Brimbank City Council published in May 2009 (**Brimbank Report**) where he indicated concern that councillors '...failed to recognise the broader ethical obligations of public officers ... preferring instead to rely on a narrow interpretation ... and limited legislative provisions ...

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In summary ... the council and the councillors should at all times in any matter act in accordance with the spirit and intent of the legislation, which in this instance is fully explained in the Initial Legal Advice."

The Second Legal Advice also put forward the following issues of concern:

- "... reputational risk to all parties concerned should the practice continue, and is ultimately queried, regardless of whether it is found to be legal;
- that expenditure is not employed in existing Council assets, as funds are allocated to things such as building works for non Council owned and operated sporting clubs or venues. There is a perceived difficulty in the way in which the merit of such applications can be gauged across the community, particularly where not all organisations may be aware of the ability to attract such funding. As such, there remains a real risk that this type of expenditure does not meet the objectives of a Council under the Act;
- previous instructions indicated that it is the practice to require the successful recipient of such funding to lodge an application for funding, and to go through an acquittal process. However in most cases (if not all) this is after the budgetary allocation process has been completed. This is not a desirable practice from a probity perspective. In addition, the practice of frequently diverting previously allocated funds to other projects, which is effected by Council resolution, from a notice of motion by the relevant councillor, is not reflective of good process and in fact undermines the integrity of the budget process and its compliance with the Act. This further emphasises the expressed concern in relation to the current practice."

The Second Legal Advice concluded:

"Finally, whilst I am in no way thinking that there is impropriety ... I think it is instructive to refer to a number of other observations made by the Ombudsman in the [Brimbank Report]. First, the [Brimbank Report] reinforced the obligation of a Councillor to make objective and independent decisions in the interests of the whole community, and secondly criticised councillors for voting in a block, even when the relevant decision was not necessarily in the required best interests of the community. [Also, with] the Councillors effectively agreeing on this level of expenditure, and voting to support recommendations of others, they can be seen to have both pre-judged issues, not determining them on their merits, and/or are not necessarily acting in the best interests of their community, bearing in mind that it is the whole community."

The Inspectorate could not confirm whether ward councillors elected in October 2012 were formally advised of the issues previously raised in regard to the operation of the Scheme. However, a ward councillors elected at that time has informed the Inspectorate that they were not advised by Council officers of previous concerns, and simply adhered to the budget guidelines provided to them by Council officers.

The Second Legal Advice appeared to create a divide between the senior management team (which included the Mayor at the time) and the ward councillors. Council staff informed the Inspectorate that during a Council briefing, ward councillors were very critical of the Mayor for seeking the Second Legal Advice when the Initial Legal Advice obtained three years prior had not indicated that the Scheme was in breach of the Act. Council staff further stated that ward councillors also voiced displeasure at the implication of reputational risk and the comparison with Brimbank City Council, where councillors had been removed for failing to uphold their duty as public officers.

According to officers present at the Council briefing following the Second Legal Advice, several ward councillors aggressively queried the substance of the advice. Others insisted that they were fulfilling funding needs within the community that Council's program of works at the time did not.

Council staff have suggested that, as a group, the ward councillors, including those newly elected in October 2012, did not consider themselves beholden to the Second Legal Advice. While it had criticised the Scheme as being of poor practice, it did not explicitly determine it to be a breach of the budget provisions of the Act. Again, despite pointed criticism of the Scheme, no subsequent amendments were made.

3.6.3 September/November 2013 advice

In light of such sector-wide initiatives as the Inspectorate Report, concerns regarding the Scheme remained. These concerns - combined with the failure to heed the warnings detailed in the Initial and Second Legal Advices - led Council to seek further advice from another legal firm with extensive experience and expertise in local government matters.

On 18 September 2013, the legal firm attended an Assembly of Councillors for the purpose of setting out its view of the Scheme.

On 25 November 2013, a written account of the advice given at the Assembly of Councillors ('**Third Legal Advice**') was provided by the legal firm to Council. It stated:

"... the [Scheme] is not unlawful ... Council itself makes the allocation of funds in its Budget (or occasionally, through Resolutions made after the Budget has been adopted). It is therefore a collective and deliberate decision to fund particular projects or organisations. Parochialism morphs into a decision made by the majority of councillors.

[Councillors were told] that the position would be different if individual councillors solicited support for projects on the basis that they received, say, electoral or financial support from particular persons. In that event section 76D of the [Act] would be relevant. There was, however, no evidence of this. Hence the conclusion that the [Scheme] and implementation of the [Scheme] is not unlawful; but ...

there is a reputational risk to Council by perpetuating the [Scheme] ... the local government sector operates against a backdrop where a number of integrity or oversight bodies are active [including] the Ombudsman, [the Inspectorate] and the Independent Broad-based Anti-corruption Commission.

[It was] indicated to councillors that ... there was a risk that one or more of these bodies will investigate the [Scheme] (and its implementation) and could characterise the [Scheme] (and its implementation) as 'pork barrelling'.

[The verbal advice given to the Assembly of Councillors on 18 September 2013] pointed to the lack of justification for the allocation of the amount, lack of justification for an equal amount for each ward and the absence of evaluation criteria against which projects or organisations could be assessed.

What had previously been stated by the Inspectorate in its letter to Council about [CDF] was quoted as an indication of the risk associated with any Inspectorate investigation of the [Scheme] (and its implementation). The Inspectorate said:

‘Making funding allocations available equally to all members of the community through a well governed and transparent funding application program would remove the perception of councillors having the ability to make funding available only to certain members of the community or as an opportunity for self promotion.’”

The Third Legal Advice also outlined two broad options available to Council:

- adopt the practice of other councils, by allowing councillors to ‘push’ particular projects in pre-budget discussions but in circumstances where those projects are evaluated against other possible projects and decisions are then taken as to what should be included in the budget; or
- continue with the [Scheme] but adopt criteria against which projects could be evaluated (with the possibility of final decisions then being disclosed online).

The Third Legal Advice advised that the first option “embodied” best practice.

Council staff have suggested that following this meeting, ward councillors took the view that if the Scheme was not in breach of the Act, there was no reason for it not to continue. The Inspectorate understands that ward councillors instructed Council staff to keep the Scheme in place without amendment, and indicated that it was the staff’s responsibility to ensure it would stand up to any future governance scrutiny.

3.7 Community Concepts Program

Council staff have stated that despite various failed attempts to improve the Scheme by Council administration, ward councillors only took into consideration changes following increased public scrutiny and the Inspectorate’s focus on the Scheme in late 2013. Projects that had been approved as part of the 2013/14 budget continued to progress but arrangements were put in place for developing a new community engagement process for the 2014/2015 budget. Council staff advised the Inspectorate that key components were to be greater transparency, accountability and accessibility.

As a result, Council established the Community Concepts Program (**‘Program’**), which embraced a number of the elements of good governance lacking in the Scheme. It did so by:

- publicly advertising the availability of funding through a series of community presentations and notifications on Council’s website in order to provide access to funds; and
- allowing for the formal application for funding through an online and/or a hard copy application process.

The Program facilitated an application process for eligible community groups, organisations or individuals across the entire municipality. Applicants were invited to make funding submissions for capital works priorities, which would then form part of the planning for the 2014/15 budget. In an explanation of the rationale behind the Program, one Council staff member stated:

“The background to the [Program] was that it really changed the focus from what was an informal process of community engagement to a formal process of community engagement. [It

was] led by officers as opposed to being led by councillors ... I think it was a significant step forward in terms of formalising a process of community engagement.”

Notwithstanding these improvements, the Program stopped short of fully meeting the accepted principles of good governance, including transparency, as Council failed to publicly disclose successful funding recipients and the level of funding each successful recipient received. Furthermore, a review of the successful recipients indicated that not all successful recipients met the requirements set out by Council. For example:

- funding of \$30,000 was approved and included in the budget through the normal budget briefing process despite the funding request being emailed to a ward councillor without a formal application being completed, and the email being received prior to the application closing date;
- funding was provided to non-capital works projects in contrast to Program criteria at the time applications were to be submitted; and
- funding was provided to projects that did not involve Council owned assets.

Council staff have informed the Inspectorate that changes were made to the Program criteria subsequent to the formal application process being completed; however, this could not be supported by formal documentation.

3.8 Cessation of the Scheme

On 17 February 2014, the Executive Director of Local Government Victoria wrote to a number of councils identified in the Inspectorate Report published in October 2013, stating:

“... this review identified areas of serious concern in relation to the practice of some councils in relation to what are described as [CDF] ... These concerns related to general principles of accountability and probity, but were also expressed in relation to the specific practices operating in particular municipalities, including yours.”

Council was asked to consider the Inspectorate Report and,

“... if necessary review your current practices in relation to the appropriate allocation of council funds. This means ensuring no policies or budget allocations [are] in place that provide monies to particular wards or councillors or in any other way made available for individual councillors to use on a purely discretionary basis.”

As a result, the practice of making available the sum of \$600,000 to each ward councillor immediately ceased. The cessation of the Scheme was timely, as ward councillors had commenced considering projects for inclusion in the 2014/15 budget.

4. Scheme overview

In the 2013/14 financial year, \$600,000 was made available to each ward councillor for allocations to projects in their ward. The total sum of \$7.2 million equated to approximately 10% of Council's annual capital works budget.

Through a review of existing master plans, minimal advice from Council staff or simply at a ward councillor's discretion, ward councillors would formulate draft lists of potential projects to be included in the budget in accordance with the \$600,000 ward allocation per financial year. Potential projects were provided to Council officers via email with no scoping and/or business plan attached.

In the lead up to the annual budget, Council staff would offer assistance to ward councillors to appropriately scope and research proposed projects. A number of ward councillors accepted the offer; however, other ward councillors did not adopt this approach, preferring instead to utilise their own discretion and judgement.

Council staff have advised the Inspectorate that involving ward councillors in the pre-budget discussions gave staff a greater awareness of those projects that were ultimately included in the budget. Ward councillors not involved in the pre-budget process provided challenges at times, as funding arrangements would be constantly amended up until the end of the budget period, often delaying the preparation of the budget.

Council staff have suggested that once ward councillors were satisfied with their proposals they would submit their finalised proposed project lists to the finance department for inclusion into the budget, regardless of whether Council staff had discussed proposed projects with ward councillors.

Project proposal lists were included in Council's draft budget as part of the Strategic Directions and Annual Action Plan, although they were not identified in the draft budget as Scheme funding. If no submissions were received under section 223 of the Act, the proposed projects would be adopted in line with the normal budget process with no further scrutiny or oversight.

4.1 Councillor decision process

No formal requirements were placed on ward councillors to have proposed projects approved for inclusion in the budget. Ward councillors would simply provide the finance department with an email containing a list of proposed projects and an approximated cost of each. For example, lists would simply be submitted as follows:

"A very rough outline of potential capital projects/disbursements for my 12/13 budget are as follows:

1. \$180,000 – ... Netball Club
2. \$50,000 - ... Baseball Club - infrastructure works
3. \$30,000 – ... Bowls Club – recover kitchen floor
4. \$50,000 – ... upgrade on the southern banks

5. \$50,000 – ... Cricket Club – rebuild practice net area and new roller
6. \$30,000 – Manufacturing Council – special project
7. \$40,000 – public art displayed
8. \$30,000 – ... Cricket Club - complete re-fencing and pathway project around the ground
9. \$30,000 – ... Senior Citizens – upgrade of kitchen area
10. \$40,000 – further upgrade works of playgrounds ...
11. \$20,000 – Tourism – specific projects to further promote Geelong”

Another example is as follows:

“Here is the breakdown of \$600,000 for ... Ward priorities:-

... Sporting Club upgrades - \$400,000; Chamber of Commerce website development - \$10,000
... program development, PA system, board table - \$80,000 ... food and wine [e]vent - \$20,000
... festival - \$10,000 ... [S]econdary [C]ollege youth festival - \$10,000 ... Australia Day
breakfast \$250 ... [H]istorical [S]ociety and [M]useum, fit out of new building and furniture
\$10,000 ... Sporting Club, completion of clubroom renovations - \$20,000 ... building entrance
artwork - \$5000 ... view of Geelong destination/historical marker - \$25,000 ... walk assistance -
\$5000 ... garden artwork project \$2500”

On the basis that the total cost of the proposed projects did not exceed the amount allocated in that year, each project would be approved for inclusion in the budget without formal internal scrutiny by Council officers. In most instances, projects were adopted into the budget without requiring any justification from the relevant ward councillor or formal discussions with Council staff. The Inspectorate considers that funding allocations in some instances were ‘best guesses’ as opposed to being formally scoped and costed. At times, projects were allocated funding in line with what was left within a ward councillor’s budget to allocate, rather than what was required to fully fund the project. Further, as business cases were not required for ward councillor-initiated projects, ward councillors would routinely amend project proposal lists until just prior to the final budget briefing session.

4.2 Funding allocations

Queries were raised in regard to one former ward councillor who allocated approximately \$2.2 million to Thomson Reserve, just over half the funds made available to each ward during this time. As the home of the Thomson Football Club, the ward councillor previously held positions as President and Treasurer of the club, as well as being an inaugural Hall of Fame inductee, but held no official role at the club at the time this funding was provided. No other sporting clubs or facilities throughout the municipality received funding of this significance through the life of the Scheme.

While not matching the magnitude of the Thomson Reserve allocations, the Inspectorate identified that in the 2012/13 and 2013/14 financial years, a second ward councillor allocated the sum of \$205,000 towards a number of initiatives at St Albans Reserve – home to the St Albans Breakwater Cricket Club. The ward councillor had been President of the club for 10 years before relinquishing this position on 10 March 2013, just prior to the allocation of these funds.

Faced with criticism, both ward councillors insisted that they had not acted unjustly in allocating funds to clubs or organisations with which they had long term associations.

4.3 Submission of funding requests

Council's usual budget approval time frames were often not followed for Scheme projects. Ward councillors would routinely amend their lists of proposed Scheme projects outside of internally set budget time frames. Ward councillors regularly emailed Council staff just prior to budget finalisation to request that the allocation amount or projects to which funds had been allocated be altered, potentially creating delays in completing the budget on time.

Depending on the number of proposed amendments and the time that the request was received, Council staff may not have always been able to accommodate the ward councillor request. For example, in one email viewed by the Inspectorate, a ward councillor requested:

"... one thing I forgot to mention in our discussion yesterday was that I need to allocate \$10,000 to ... assist with the development of [a] ... document, in line with my ... portfolio. Can you change the allocations as follows: ... \$20,000 (was \$30,000 when we spoke yesterday), ... study \$10,000 ...",

to which a senior staff member responded:

"Sorry, can't do. Just finalising printing for distribution of Monday night's agenda."

The ward councillor attempted to circumvent the senior staff member's decision by requesting, "can I just mention it on Monday then?"

However, in another email viewed by the Inspectorate a ward councillor requested the following:

"... it is my understanding that 85K is allocated to the ... reserve master plan. I would like to put 15K to ... and an additional 20K to the upgrade of the kitchen at ... football club therefore leaving 50K towards the ... reserve master plan. Sorry for the late notice",

to which a senior staff member responded, "... have made the changes."

These amendments, often at the last minute, again demonstrate the discretion of a ward councillor to allocate funds to projects without the need to justify funding decision making. As previously highlighted, there was no requirement for Council staff to be engaged during the decision making phase. A senior staff member indicated in a discussion with the Inspectorate that requiring ward councillors to adhere to timetables and deadlines was extremely difficult:

" [It is] very difficult to hold a councillor accountable to [an agreed budget] timetable that I was trying to [adhere to] ... therefore adherence to [the agreed budget] timetable became a problem for me."

Council staff informed the Inspectorate that ward councillors' failure to observe budget timetables that had been set typically meant that the preparation of budget papers and briefings were routinely delayed, leading to increased time pressure during the budget preparation stage.

4.4 Administration of the Scheme

Once projects were approved through the budget process, Council's standard project and supplier engagement processes applied. The Inspectorate considered this practice to be in line with Council's normal expenditure requirements.

Projects were entered into Council's project management system, creating an electronic document called a 'project charter' which included details such as: project name and number, stakeholders, description, objectives, purpose, scope, costs and management. The project charter was then sent to the relevant ward councillor for review and execution.

The project proceeded according to whether it was to be managed internally by one of Council's departments (typically large capital works projects) or externally by the funding recipient (typically smaller capital works projects or disbursements).

Where a project was managed by Council, the value of the project governed whether the project was subject to a public tender process or a quotation process. Section 186 of the Act sets limits to which councils must go to public tender, "for the purchase of goods or services to the value of \$150,000, or for the carrying out of works to the value of \$200,000." Where projects were required to go to public tender, it was demonstrated that Council met requirements in terms of advertising for tenders, the evaluation of tenders and contract execution.

If not subject to a public tender process, in the majority of instances Council met its internal procurement policy in regard to the number of quotations sought and received depending on the value of the works to be undertaken. Quotations were assessed by Council staff, who then appointed a preferred supplier based upon best value principles. Supplier payments were processed in accordance with contract conditions.

Where a project was managed by the funding recipient, project managers were tasked with ensuring that:

- a funding agreement was executed by both a Council delegate and the funding recipient which, among other things, determined the scope of the project and frequency of payments to the recipient (for example, a one-off allocation or payments distributed according to milestones having been reached); and
- an invoice was submitted to Council by the recipient for each payment.

Payments would be made to the recipient in accordance with the funding agreement.

Irrespective of whether the project was managed internally or externally, Council staff oversaw projects to ensure they were completed as contracted or as agreed upon.

The Inspectorate also identified occurrences of 'partnership projects', where funding recipients had indicated to Council that they could complete a portion of a capital works project utilising fewer financial resources than Council. Council would permit the recipients to carry out that particular part of the project (subject to executing an agreement to that effect). However, project managers would continue to oversee the project and ensure it was completed to Council's satisfaction.

4.5 Reallocation of funds process

In instances where a project was completed under budget or did not proceed, ward councillors moved a notice of motion to reallocate funds from that project to another. These funds were reallocated to either provide funds to a previously budgeted project that required extra funding or were utilised to create a new project. As with the initial allocation practice, other than through a notice of motion there were no guidelines or processes in place to govern the reallocation of funds process. Council staff have stated that ward councillors were not required to request that staff undertake any feasibility studies or provide justification whenever funding reallocations were requested.

While funding reallocations were detailed in Council meetings through the passing of a formal notice of motion, Council staff have informed the Inspectorate that they do not recall any instances of ward councillor debate and/or any form of public scrutiny, particularly in regard to funding newly created projects. In conducting this investigation, no instances were identified where a reallocation notice of motion was not successfully carried.

As highlighted previously, while original Scheme allocations were not identified through the budget, legislation provides the opportunity for members of the community to make a submission in regard to proposed budget funding under section 223 of the Act. Despite the fact that the reallocation of funds was proposed and accepted in Council meetings, there was little or no opportunity for the public to question and/or challenge the ward councillor initiated reallocations of funds.

4.6 Features of an accountable CDF

As part of the Inspectorate Report on discretionary funding published in October 2013 (see section 2.2 above), the Inspectorate included a summary of the characteristics of an accountable CDF, being:

- the requirement for a formal application process;
- the provision of an eligibility criteria policy;
- the transparent assessment of applications;
- public reporting of grant recipients;
- a transparent acquittal process; and
- the provision of strict conflict of interest disclosure requirements.

None of these elements were in place in relation to the Scheme, which was in contrast to Council's less significant CGP.

5. Inspectorate investigation process

5.1 Examination of records

Prior to the commencement of the investigation, the Inspectorate was provided with details of all allocations made through the Scheme since its inception. Following the decision to only investigate those allocations made in the past three financial years, Council provided information recorded in its project management database. Prior to attending Council's offices, the Inspectorate analysed each individual allocation.

Council also provided copies of the relevant minutes of meetings containing notices of motion evidencing the reallocation of funds between Scheme projects during the three-year review period, which were also thoroughly analysed.

Once all allocations were identified, the Inspectorate requested that Council collate and provide all relevant project information. In preparation for the investigation, the Inspectorate created files for each of the 623 allocations made in the review period.

Council collated the required information in a specifically created electronic folder. Once available, the Inspectorate then immediately commenced the on-site review process in April 2014.

Information captured in Council's electronic folder included:

- relevant tender documentation, such as evaluation reports, scoring matrices and evidence of tender openings;
- relevant quotations, internal records of quotations, variations to quotations and invoices;
- relevant funding agreements, associated invoices and payment requests;
- agreements for funding from external third parties, where applicable; and
- copies of project charters from Council's project management database.

Council initially advised the Inspectorate that 262 projects had been funded during the review period. Following the cross-referencing of various documents provided by Council, a further 134 projects, mainly comprising of disbursement projects, were identified as having been allocated funding through the Scheme during this time. These projects, overlooked by Council when collating the information, contributed to delays in progressing the investigation. The Inspectorate is satisfied that the information had not intentionally been withheld.

The investigation was delayed while Council spent several weeks collating the information required for the additional projects. Once the investigation recommenced, the Inspectorate spent considerable time completing the project review at Council's offices. At the completion of this phase of the investigation, the Inspectorate had evaluated 396 Scheme projects for compliance with the Act and Council's service procurement requirements.

Inspectorate staff then conducted a systematic reconciliation of each financial transaction through Council's financial and accounting database. This was a protracted process as each project was reviewed individually and often involved multiple payments to multiple suppliers, typically over several years.

Through the investigation, the Inspectorate identified numerous instances where Council had not initially provided all requested information, and this required Council to source and provide the supplementary information and/or documentation.

In reconciling the financial transactions, a number of projects were identified as having exceeded their original Scheme allocation. However, upon querying these anomalies, Council provided further information identifying that these projects had been subject to additional funding from multiple sources, including grants provided by the State or Federal Government or external third parties.

The following information was collated and examined during the course of the investigation:

- project name;
- project description;
- ward and councillor;
- the financial year or years within which Scheme funds were allocated;
- the total amounts budgeted for each of the financial year or years in which Scheme funds were allocated;
- the amount spent to date (using the financial information collected from Council's financial management database);
- whether the project was under or over budget and by how much;
- whether the project complied with the Act and/or Council's procurement policy, and detailed reasons for any non-compliance; and
- the current status of the project.

During this time, the Inspectorate also reviewed and reconciled all minutes of meetings containing notices of motion, which had the effect of reallocating funds between projects during the review period. This process was complicated and protracted as the Inspectorate identified that notices of motion did not always reference project numbers to which funds were to be allocated, resulting in a requirement to cross-reference multiple Council documents against each notice of motion to ascertain those projects with deducted funds and those projects with additional funds.

The Inspectorate also examined copies of over 300 councillor and/or staff emails and attachments that related directly to the Scheme.

The Inspectorate viewed primary and ordinary interest returns submitted by all ward councillors since the inception of the Scheme. There was no evidence to establish any direct conflicts of interest.

The Inspectorate reviewed Council's Audit Advisory Committee summary reports for the relevant review period. It was concerning to the Inspectorate that despite the receipt of three separate legal opinions, each criticising the practice of the Scheme and providing recommendations for improvement, it does not appear that the legal opinions were formally provided to the Audit Advisory Committee for its

consideration. In terms of the role of the Audit Advisory Committee, the Inspectorate considers that this matter should have been formally raised with the Audit Advisory Committee for its consideration.

A small selection of facilities were attended by the Inspectorate as part of the investigation. These facilities were selected based on the total value of allocations made to each facility since 2005. The reviews were undertaken to confirm the current status of each of the above projects.

Due to the large volume of information, the project review component of the investigation was finalised in September 2014.

5.2 Opportunity for discussions

In mid June 2014, the Inspectorate sent all current ward councillors, selected former ward councillors, and selected Council staff members an invitation to discuss the Scheme. The focus of the proposed discussion included such topics as the implementation of the Scheme, their understanding of its operation and the origin of any improvements or amendments proposed.

The current Mayor, the former Mayor, and one former ward councillor agreed to discuss these matters with the Inspectorate. Other former ward councillors, and all current ward councillors, declined the Inspectorate's invitation to discuss the Scheme.

The Inspectorate also discussed these issues with several current and former Council staff.

Discussions were conducted in the presence of a legal representative who acted for the respective subject.

6. Findings

6.1 Summary of findings

The Inspectorate identified critical flaws in regard to the operation of the Scheme by Council. In particular, it:

- did not meet general standards of good governance as it was not open, transparent and/or accountable in that:
 - no formal guidelines, policies, procedures or structured processes were created or implemented to consider eligibility or evaluation of proposed recipients of funding;
 - the Scheme was not formally advertised or promoted within the community;
 - no formal application process was created or implemented;
 - annual ward allocations were included in the draft budget without due consideration or formal discussion by other ward councillors;
 - prioritisation of community capital works needs was not undertaken as it related to the Scheme, rather decisions were made unilaterally by ward councillors;
 - feasibility studies or business cases were not required to be submitted with project proposals for inclusion in the draft budget;
 - funding was permitted to be allocated to external entities for the creation or improvement of non-Council owned assets;
 - the annual Council budget only captured projects by funding type (ie, capital, non-capital, disbursement), therefore they were not independently identifiable as Scheme allocations;
 - Council staff:
 - felt undue pressure from ward councillors to comply with funding requests; and
 - were not provided with adequate information to appropriately scope projects prior to inclusion in the draft budget; and
 - the reallocation of funds process:
 - lacked formal debate;
 - lacked detailed information justifying the proposed reallocation in Council meeting minutes; and
 - was not accompanied by a business case or feasibility study to support the amendment to the original allocation purpose;
- exposed Council to risk, in particular reputational risk, potential fraud and/or potential corruption:

- Council failed to amend Scheme practices after receiving three independent legal opinions which were critical of the practice;
- while not compelled to do so, councillors failed to implement reasonable staff proposals incorporating governance around the Scheme practice;
- was inconsistent with a positive furtherance of the following general objectives of a council as set out in section 3C(2) of the Act in that it failed to ensure:
 - that resources were used efficiently and effectively;
 - that services and facilities provided by Council were accessible and equitable; and
 - transparency and accountability in Council decision making; and
- was inconsistent with Council's strategic planning processes in that:
 - it allowed for ongoing expenditure that was not in line with the Council Plan, its carefully considered long term strategies or prioritisation processes to rank competing needs across the entire municipality; and
 - it created assets committing Council to recurrent funding to ensure the ongoing upkeep or maintenance of the newly created facilities, irrespective of whether they were due for funding through Council's normal asset creation/renewal cycle.

Notwithstanding, the Inspectorate found that the implementation and carrying out of the Scheme did not directly contravene any of the budget provisions of the Act, consistent with legal advice obtained by Council.

Further, upon the full forensic investigation of the 396 projects funded by the Scheme over the three-year review period, the Inspectorate:

- did not identify any activity that it considered to be fraudulent;
- did not identify any activity that it considered to be a misuse of position in breach of section 76D of the Act;
- did not identify examples of ward councillors having a conflict of interest relating to the allocations provided to groups or organisations in terms of the Act, despite perceptions or the potential for a conflict of interest to exist; and
- found that following budget approval, project management and supplier engagement was carried out in accordance with section 186 of the Act and, in most instances, with Council's internal policies and procedures.

6.2 Standards of good governance and accountability

One of the criticisms following the exposure of the Scheme was the lack of awareness of its existence within the general community. There was concern within the community that Council was facilitating the expenditure of public monies without a formal public consultation process. At no point was the availability of these funds made known or advertised through either Council's website or through local media forums. Council staff indicated that ward councillors considered that members of the local community had generally been aware of the Scheme's existence, despite it not being formally publicised.

Nonetheless, it appears that any general knowledge of its existence was through local networking or word of mouth as opposed to a clear, formal communication strategy delivered by Council.

From inception, Council administration believed the Scheme to be part of the normal budget process. It was never considered to be a distinct funding program that necessitated separate governance requirements or pronounced administrative oversight. Therefore, no independent guidelines, policies or procedures were ever developed or published to regulate any aspect of the Scheme. The Scheme lacked clarity, most particularly in regard to project funding eligibility and the level of funding allocated to individual projects. Accordingly, there was a lack of consistency across the municipality as funding eligibility was dependant on each ward councillor's determination of need, and not a uniform, standardised approach utilised by all ward councillors.

There was little or no formal debate of the merits of proposed projects as part of Council's budget considerations. Ward councillors were not required to request that staff prepare feasibility studies or business cases to be included with their emailed lists of proposed projects. Once a project was nominated by a ward councillor to form part of their annual allocation, that project was included in the budget provided that it did not exceed the ward councillor's annual funding provision through the Scheme.

Prioritisation of community capital works needs was not undertaken as it related to the Scheme, as ward decisions were made independently of each other. In evaluating the prioritisation of projects funded through the Scheme, it is acknowledged that it is difficult to measure the need or worth of projects as they relate to various sections of the community. However, it is expected that the expenditure of public monies be based upon a quantifiable measurement of need.

It was not demonstrated to the Inspectorate that ward councillors had undertaken a considered or uniform approach when assessing the worth or value of a project to their ward as it related to the entire municipality. Council staff have suggested that the lack of clear guidelines or criteria resulted in ward councillors not consulting with each other, therefore lacking a collaborative approach to their decision making. This informal approach to decision making resulted in funding commitments to areas that Council had previously committed to reduce or remove. One Council staff member explained, "councillors were clearly expressing an interest in expending public monies in areas that Council had already previously committed cutting back on." Existing funding requirements through the budget were not applied to the Scheme.

Council staff indicated that they were routinely frustrated that proposed Scheme projects nominated by ward councillors did not require any funding justification by way of a feasibility study or business case in order to be included in the budget. This was in contrast to normal officer-initiated projects, where it was required that a business case be prepared prior to being submitted for budget approval. In discussions with the Inspectorate, two staff members commented that:

"I needed to do a business case to get funding but councillors didn't need to do that", and "there was a sense of frustration that councillors could recommend projects for inclusion in the budget with no formal business case or assessment but as staff [we] were required to do so."

Staff expressed further concern that private groups or organisations such as bowling or multicultural clubs were eligible for Scheme funding. It was felt that private entities should not qualify as this resulted

in facilitating assets that were not strictly Council owned, therefore being of limited benefit to the wider community. The funding of non-service type activities was also questioned.

The adoption of proposed projects into the annual budget also raised governance concerns. Scheme projects were not independently identified in the budget. Rather, expenditure was captured in the budget only by funding type (ie, capital, non-capital or disbursement). Further, while Council listed all projects in its annual budget, it did not list a dollar value attributable for all projects. As a result, in viewing the annual budget readers would not be aware of which projects were funded through the Scheme, or the level of funding allocated to all projects. As one Council staff member described:

“If a member of the public was looking at the budget, they would not [know] that a particular councillor allocated a particular sum of money to a project.”

The culture of Council was also called into question internally by operational staff, who were critical of the Scheme. In essence, staff members felt that they were powerless to effect change. One staff member explained to the Inspectorate that a number of project managers just accepted their role and did not question ward councillors about funding decisions even where they clearly did not align with Council strategies. The staff member also stated that the operational process was so embedded within Council that staff felt pressured to abide by ward councillors’ decisions. Operational staff felt it was not their place to challenge the practice, but rather ensure the work was undertaken as smoothly as possible.

Staff also voiced frustration that they were required to scope projects only after they had been included in the budget with little or no information from ward councillors. One staff member noted:

“Nothing was provided to me when a project was started. That was more my frustration rather than the timeline or delivery of the project. I thought that the process was backwards where they allocated funds to a project first and then asked us to scope the project. We were just told to get it done. The better way would have been for the councillors to say that they wanted something done, then we could scope and estimate the project, and then seek and allocate funds.”

The reallocation of funds process raised similar governance concerns. While there was limited transparency of the approval process via the notice of motion requirement, Council failed to create or implement a policy that outlined funding eligibility or approval criteria. Despite the fact that the reallocation of funds was proposed and accepted in Council meetings, there was little or no opportunity for the public to question and/or challenge any reallocation of funds, particularly as the source of funds was generally unknown.

Council staff have informed the Inspectorate that they do not recall any instances of ward councillor debate and/or any form of public scrutiny in circumstances where ward councillors proposed to reallocate funds between projects. In conducting this investigation, no instances were identified where a reallocation of funds request was not successfully adopted in the Council chamber.

Council staff stated that, similar to the initial allocation process, ward councillors were not required to request that staff prepare feasibility studies or provide justification, regardless of whether reallocating funds to an existing or newly created project.

6.3 Risks

Following ongoing concerns in regard to the risks associated with the operation of the Scheme, senior management sought three independent legal opinions between January 2010 and November 2013. Each opinion reached a similar conclusion: that while the practice of the Scheme was not considered to be in breach of the budget provisions of the Act, it exposed Council to risk, in particular reputational risk, potential fraud and/or potential corruption.

The Third Legal Advice advised ward councillors that there was a reputational risk in continuing to operate the Scheme. It noted that there was a risk that:

- one of the integrity or regulatory bodies responsible for overseeing Council would investigate the Scheme; and
- there was a possibility that the Scheme could be viewed as “pork barrelling” as a result of the absence of evaluation criteria against which projects and organisations could be assessed.

The lack of any formal governance or guidelines with which to adhere may also have led to potentially fraudulent and/or corrupt practices where funds were committed to groups or organisations in which ward councillors had an interest.

Further, there is a risk that ward councillors may breach various other sections of the Act, such as:

- section 140(2)(c), which imposes a duty on councils to do all things necessary to ensure that public funds are correctly expended and properly authorised; and
- section 76D(2)(e), which provides for circumstances involving the misuse of position by a person who is or has been a councillor, including using public funds or resources in a manner that is improper or unauthorised.

Council staff have informed the Inspectorate that ward councillors did not accept the advice offered to them in regard to improving the practice of the Scheme following each of the three Legal Advices, their philosophy being that if it was not considered an illegal practice, there was no reason for it not to continue. Council staff were informed by ward councillors that the Scheme was to continue unchanged.

Council staff also reported that ward councillors failed to consider proposals to increase rigour around the Scheme practice. As highlighted in section 3.5, as the Scheme moved away from implementing master plan proposals between 2009 and 2013, staff attempted to implement changes to the Scheme. However, Council’s failure to act or to bring about change ensured that these inherent risks were not addressed.

6.4 General objectives of a council

Section 3C(2) of the Act details the facilitating objectives to which a council must have regard in seeking to achieve its primary objective, being to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions:

“(b) to ensure that resources are used efficiently and effectively ...;

...

(e) to ensure that services and facilities provided by the Council are accessible and equitable;

...

(g) to ensure transparency and accountability in Council decision making.”

Having regard to this section of the Act and general principles of proper public administration, it appears that Council did not take into account the furtherance of the objectives in implementing the Scheme.

It is suggested that the phrase 'local community' refers to the community as a whole, not individual wards. The Second Legal Advice states:

“in this sense, the community is clearly not a ward, but the whole of the municipal district. It is arguable that where a significant expenditure is tied to a particular ward it cannot be said that the funds are being allocated purely for the benefit of the whole community.”

In addition, Council's practice of having projects included in the budget and the subsequent allocation of funds to those projects with little or no debate does not meet general principles of proper public administration as they relate to the efficient and equitable use of resources. As indicated in the First Legal Advice:

“... any practice where a council accepts budgetary proposals of a councillor without challenge or debate is not consistent with the proper discharge of a councillor's functions, and conflicts with a council's obligations to ensure the efficient and equitable use of resources.”

6.5 Inconsistent with Council's strategic planning processes

As previously stated, no clear guidelines were established for any aspect of the Scheme or its operation, including the relationship between Scheme funded projects and Council's strategic planning processes. In allocating funds, ward councillors were not required to align Scheme expenditure within their wards to the Council Plan, Council's long-term strategies or any prioritisation process. This is highlighted by the fact that Council distributed an equal sum of funds to each ward councillor regardless of the varying needs of individual wards. Any such prioritisation process would need to take into account socioeconomic factors, population growth and general infrastructure requirements.

Scheme allocations would in some cases be in direct contrast with recent expenditure decisions undertaken by Council. Ward councillors were able to allocate public monies to areas where, previously, Council had strategically determined to reduce spending. In that regard, it was indicated by staff that ward councillors would often drive their own ward-based projects ahead of the normal asset cycle for that particular asset or facility, in contrast to the normal Council prioritisation process.

Scheme allocations also had long-term expenditure implications. In addition to the initial allocation, Council was required to fund the upkeep, maintenance and replenishment of the assets and facilities funded under the Scheme. The continuous extra cost of repairing these assets was not factored into the budget. As one staff member noted to the Inspectorate, “there is no real budget for Scheme projects, and the assets improved by Scheme funds will begin to depreciate. In 10 years' time this will be a liability.”

7. Conclusion

Councils, as public entities, are entrusted with the responsibility of providing open, transparent and accountable decision making. They must also ensure that resources are used as efficiently and effectively as possible.

In operating the Community Priorities Scheme, the Greater Geelong City Council failed to adhere to these fundamental principles of good governance. The Inspectorate identified critical flaws in the operation of the Scheme in that it fundamentally failed the tests of openness, transparency and accountability, nor did it ensure or demonstrate that scarce local resources were used in the most efficient and effective manner.

Notwithstanding this conclusion, the investigation did not reveal any offences under the Act or any fraudulent activities.

As highlighted by a Geelong ward councillor in a recent media article, any such scheme must exhibit good governance and be transparent and accountable.⁴ It was further indicated that any scheme without these characteristics is "fatally flawed."⁵ A second ward councillor was quoted as saying the Greater Geelong City Council "was made up of 13 councillors and should work as a group rather than as individuals."⁶ The Inspectorate concurs with these views.

Concerns have been raised about the operation and risks of such schemes from various sources such as the Inspectorate, Local Government Victoria, the Victorian Auditor-General's Office, the community, media, Council staff and more pointedly Council's own legal representatives. Despite these concerns, the Greater Geelong City Council failed to heed the warnings and continued to operate the Scheme without regard for the concerns and risks raised.

The *Local Government Amendment (Governance and Conduct) Bill 2014 (Vic)*, which was introduced to Parliament but not enacted, will have the effect of prohibiting all future opportunities for ward councillor discretionary funding. This is in line with the Inspectorate's recommendations in the Inspectorate Report into discretionary funding published in October 2013.

Good governance underpins the performance and reputation of all organisations. In the future the Greater Geelong City Council must ensure that at all times it upholds its obligations under the relevant legislation and, most importantly, as expected by the community it is responsible for serving.

⁴ Mandy Squires "Thumbs down to Mayor's fund bid" *Geelong Advertiser* 16 October 2014

⁵ Mandy Squires "Thumbs down to Mayor's fund bid" *Geelong Advertiser* 16 October 2014

⁶ Mandy Squires "Thumbs down to Mayor's fund bid" *Geelong Advertiser* 16 October 2014